

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**J.S., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Madison, WI, Employer**

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**Docket No. 21-0097  
Issued: May 16, 2022**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On October 26, 2020 appellant filed a timely appeal from a May 1, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

**ISSUES**

The issues are: (1) whether OWCP properly denied waiver of recovery of an overpayment of wage-loss compensation in the amount of \$12,887.77 for the period February 1, 2008 through March 31, 2018; and (2) whether OWCP properly required recovery of the overpayment by deducting \$300.00 every 28 days from appellant's continuing compensation payments.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

### **FACTUAL HISTORY**

This case has previously been before the Board.<sup>2</sup> The facts of the case, as set forth in the Board's prior decision, are incorporated herein by reference. The relevant facts are as follows.

On July 19, 2006 appellant, then a 64-year-old city letter carrier, filed a traumatic injury claim (Form CA-1) alleging that he injured his right elbow, right shoulder, and both knees when he tripped over a tree root when delivering mail in the performance of duty. OWCP accepted the claim for superficial injury of the right elbow, forearm, wrist, without infection, contusion of the left knee, left, and complete right rotator cuff rupture. It initially paid appellant intermittent wage-loss compensation. On November 7, 2008 OWCP accepted that he sustained a recurrence of disability as of August 1, 2008. It thereafter paid appellant wage-loss compensation on the periodic rolls.

Appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. By decision dated October 5, 2018, the hearing representative finalized a preliminary overpayment determination that appellant received an overpayment of compensation in the amount of \$12,887.77 during the period February 1, 2008 through March 31, 2018 because he concurrently received Social Security Administration (SSA) age-related retirement benefits and FECA wage-loss compensation, without an appropriate offset. OWCP's hearing representative found that he was at fault in the creation of the overpayment of compensation and required recovery by deducting \$300.00 from his continuing compensation payments per 28-day compensation period.

Appellant appealed to the Board and, by decision dated October 4, 2019, the Board affirmed in part and reversed in part the October 5, 2018 overpayment decision.<sup>3</sup> The Board found that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$12,887.77 during the period February 1, 2008 through March 31, 2018, but reversed the finding of fault in the creation of the overpayment. The Board remanded the case for OWCP to consider waiver of recovery of the overpayment.

On remand, in a letter dated November 7, 2019, OWCP requested that appellant complete and return an enclosed overpayment recovery questionnaire (Form OWCP-20). It also requested that he attach supporting documentation, including copies of income tax returns, bank account statements, bills and canceled checks, pay slips, and any other records, which supported the income and expenses listed. OWCP advised that, under 20 C.F.R. § 10.438, the failure to submit the requested information within 30 days would result in denial of waiver of recovery of the overpayment.

In a completed Form OWCP-20 dated December 5, 2019, appellant reported monthly income of \$5,257.62, which was comprised of \$2,868.62 in FECA wage-loss compensation and \$2,389.00 in SSA benefits. He also reported monthly expenses totaling \$5,445.42, which included \$453.00 for rent; \$645.00 for food; \$100.00 for clothing; \$492.00 for utilities, which included

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<sup>2</sup> Docket No. 19-0824 (issued October 4, 2019).

<sup>3</sup> *Id.*

\$65.00 for the internet and \$130.00 for cable television; \$2,343.03 for other expenses; and \$1,412.39 for various loan repayments. Appellant reported that he had \$37.42 cash on hand, \$16.05 in a checking account, and \$520.60 in a savings account, totaling \$574.07. Separately, he listed additional monthly expenses, which included: \$459.53 for insurance; \$25.00 for dry cleaning; \$25.00 for parking fees; \$200.00 for gasoline; \$12.00 for an oil change; \$60.00 for haircuts; \$15.00 for license plates; \$40.00 for laundry machine/soap; \$51.00 for household cleaning; \$18.00 for personal hygiene; \$50.00 for trips to the doctor; \$224.00 for cigarettes; \$15.00 for household maintenance; \$25.00 for household items; and \$50.00 for vehicle maintenance/repairs, totaling \$1,269.53. The reported monthly expenses totaled \$6,714.95. Appellant also submitted supporting financial documents. He asserted that there should be no adjustment to his compensation payments because he never collected SSA disability benefits.

On February 4, 2020 appellant submitted additional financial documentation.

OWCP, in a May 1, 2020 decision, denied waiver of recovery of the overpayment, finding that appellant's income of \$5,257.62 exceeded his reported expenses of \$5,675.96 by more than \$50.00. OWCP required recovery by deducting \$300.00 every 28 days from appellant's continuing compensation payments.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8129 of FECA<sup>4</sup> provides that an overpayment must be recovered unless "incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience." Thus, a finding that appellant was without fault does not automatically result in waiver of recovery of the overpayment. OWCP must then exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.<sup>5</sup>

According to 20 C.F.R. § 10.436, recovery of an overpayment would defeat the purpose of FECA if recovery would cause hardship because the beneficiary needs substantially all of his or her income (including compensation benefits) to meet current ordinary and necessary living expenses, and also, if the beneficiary's assets do not exceed a specified amount as determined by OWCP from data provided by the Bureau of Labor Statistics.<sup>6</sup> An individual's liquid assets include, but are not limited to cash, the value of stocks, bonds, savings accounts, mutual funds, and certificates of deposits.<sup>7</sup>

Section 10.437 provides that recovery of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment would experience severe

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<sup>4</sup> 5 U.S.C. § 8129(1)-(b); *see D.C.*, Docket No. 17-0559 (issued June 21, 2018).

<sup>5</sup> *See V.T.*, Docket No. 18-0628 (issued October 25, 2018).

<sup>6</sup> 20 C.F.R. § 10.436. OWCP's procedures provide that assets must not exceed a resource base of \$6,200.00 for an individual or \$10,300.00 for an individual with a spouse or dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.400.4.a(2) (September 2018).

<sup>7</sup> *Id.*

financial hardship attempting to repay the debt and when an individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.<sup>8</sup> To establish that a valuable right has been relinquished, it must be shown that the right was in fact valuable, that it cannot be regained, and that the action was based chiefly or solely in reliance on the payments or on the notice of payment.<sup>9</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP improperly denied waiver of recovery of an overpayment of wage-loss compensation in the amount of \$12,887.77 for the period February 1, 2008 through March 31, 2018.

OWCP incorrectly calculated a total of \$5,675.95 for appellant's monthly expenses. The correct calculation of appellant's monthly expenses is \$6,714.95. This exceeds his monthly income of \$5,257.62.<sup>10</sup> Further, even if OWCP's disallowances are applied, appellant's total monthly expenses, still exceed appellant's monthly income of \$5,257.62. For these reasons, the Board finds that appellant is entitled to waiver of recovery of the \$12,887.77 overpayment.<sup>11</sup>

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<sup>8</sup> 20 C.F.R. § 10.437(a), (b).

<sup>9</sup> *Id.* at § 10.437(b)(1).

<sup>10</sup> *G.G.*, Docket No. 21-0875 (issued November 16, 2021).

<sup>11</sup> In light of the Board's disposition regarding Issue 1, Issue 2 is rendered moot.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 1, 2020 decision of the Office of Workers' Compensation Programs is reversed.

Issued: May 16, 2022  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board